IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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AMERICAN UNITED LIFE INSURANCE COMPANY, EUGENE P. BERRY, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of THE AMERICAN LIFE INSURANCE COMPANY of Detroit, Michigan, and DAN E. LYDICK, Receiver of THE AMERICAN LIFE INSURANCE COMPANY of Detroit, Michigan, in Texas,
Petitioners,

vs.

No. 667

CHARLES R. FISCHER, Commissioner of Insurance of the State of Iowa, as Receiver for THE AMERICAN LIFE INSURANCE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, American United Life Insurance Company, and Eugene P. Berry, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company of Detroit, Michigan, and Dan E. Lydick, Texas Receiver of the American Life Insurance Company of Detroit, Michigan, respectfully pray for a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit to review a judgment of that Court entered July 30, 1942, and with respect to which a petition for rehearing was denied Sep-

tember 22, 1942, with opinion. The Texas receiver joins in this petition pro forma, having been an appellant in the court below and desiring to avoid a re-alignment of parties. The rights and duties of the Texas Receiver were correctly adjudicated after the opinion on petition for rehearing. The transcript of the record in the case, including the proceedings in said Circuit Court of Appeals is furnished herewith in accordance with the rules of this Court.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This case was instituted and summons served under Judicial Code, Sec. 57, (Title 28, Section 118, U.S.C.A.) in the United States District Court for the Southern District of Iowa by respondent, upon authority and order of the District Court of Polk County, Iowa (R. ~~369-372~~) 157

The property involved consisted of bonds, mortgages, promissory notes, etc. of a face value in excess of $3,600,000.00.

Pursuant to certain contracts of reinsurance of a domestice life insurance company of the State of Iowa, reinsured by a Michigan company, certain property was deposited with the Insurance Commissioner of the State of Iowa under the terms of the contract. Prior to the reinsurance, the Iowa company had on deposit with the Insurance Commissioner of the State of Iowa property deposited pursuant to the Iowa laws relative to domestic companies.

Pursuant to a bill of complaint filed under the Michigan Statute for the liquidation of insolvent life insurance companies, on April 12, 1938 in the Ingham County Circuit Court, the Insurance Commissioner of the State of Michigan was appointed Statutory Receiver of the Michigan Company.

Pursuant to a bill of complaint filed in the State District Court of Polk County, Iowa, on June 17, 1938, the

Insurance Commissioner of Iowa was appointed Receiver of the Michigan company in Iowa.

Pursuant to a bill of complaint filed May 29, 1938, in the District Court of Tarrant County, Texas, 96th Judicial District, Dan E. Lydick was appointed receiver of the property of the Michigan company within the State of Texas on August 28, 1938.

The complaint in this cause was filed on January 2, 1940, in the United States District Court for the Southern District of Iowa by the Iowa Receiver sought a decree to determine the status of the property deposited in Iowa.

The Michigan receiver claimed title to all the assets of the Michigan company by virtue of the Life Insurance Company Liquidation Statute of the State of Michigan, being Section 12266 of the Compiled Laws of Michigan, 1929.

The American United claimed title by virtue of a re-insurance agreement made with the domiciliary receiver on the 17th day of November, 1939, wherein it succeeds to the title of all the assets in the receivership.

The District Court by its decree granted the relief asked (R. 197). This decree was reversed by the Circuit Court of Appeals (117 Fed (2d) 811

Upon appeal to this Court, by decision dated January 5, 1942, reported in 314 *U. S.* 549, 62 Sup. Ct. 380, 86 L. Ed. 328, the cause was reversed and remanded to the Circuit Court of Appeals for the Eighth Circuit to determine, "What rights under Iowa law, Iowa and its receiver had to the securities and the collections thereon * * *."

The opinion of the Circuit Court of Appeals to which this petition for writ of certiorari is directed was handed down July 30, 1942, and was modified by a written opinion on petition for rehearing, handed down September 22, 1942. The decree of the District Court was modified and affirmed by the opinion of July 30, 1942 of the Circuit Court of Appeals for the Eighth Circuit in holding,

> "We therefore hold that, under the law of Iowa, title to the securities of the Michigan company, maintained with and in the hands of the Iowa Insurance Commissioner, at the time the Michigan company became insolvent, in fulfillment of its obligation under the reinsurance agreement with the old Iowa Company, has become vested in the State of Iowa, and that the Iowa Insurance Commissioner, on behalf of the State, in his official capacity and in his capacity as statutory receiver, has the right, independent of any domiciliary or ancillary receivership of the Michigan company, to administer such securities for the benefit of the policy holders of the old Iowa company."

and as modified by the opinion of September 22, 1942,

> "if the Iowa Commissioner, in his official capacity or in his facilitating status as receiver, found it necessary to resort to the courts of another state, he obviously would subject himself to the public policy of that state. 'He must submit * * * to the mandate of the sovereignty that has the physical control of what he would reduce to his possession.' 294 U. S. at page 214. Such other state in turn, as a matter of full faith and credit, would be required to recognize the status and rights created by Iowa law, 'with whatever rights and privileges accompany such recognition according to its own law'. Id., at Page 215."

FACTS

This controversy arises out of the insolvency of the American Life Insurance Company of Detroit, Michigan. The subject matter of the controversy is the right to possession for administration of securities of the face value of $3,600,000.00 deposited with the Insurance Commissioner of the State of Iowa, pursuant to Exhibits A, B and C (R. 65, et seq.) which were contracts whereby the American Life Insurance Company of Detroit, Michigan, reinsured all the business of the American Life In-

surance Company of Des Moines, Iowa. Exhibit A was executed on July 30, 1921. On that date the Iowa Company had on deposit with the Insurance Commissioner of Iowa securities of the face value of $2,930,840.71 pursuant to the requirements of the Iowa statutes governing domestic life insurance companies. This amount represented the net cash value or legal reserve of the policies then in force of the Iowa company (R. 56). Supplementary contracts, Exhibits B and C, were entered into between the companies on December 27, 1922 and October 24, 1923 to complete the transaction. Whereupon the Iowa Company was dissolved (R. 57).

Prior to the execution of Exhibit A, all policies of insurance issued by the Iowa company were signed and delivered at the home office of the company in Des Moines, Polk County, Iowa (R. 52). Each had printed on the face of the contract in large letters, "The full reserve on this policy is secured by a deposit of approved securities with the State of Iowa," (Exhibit F—R. 80). In Section 6, General Provisions of the policy contract, is the provision, "The legal reserve on this policy shall be invested in approved securities and deposited with the State of Iowa as required by law," (Exhibit F—R. 80). The Michigan company did not rewrite the policies, but issued each policyholder a document entitled "Certificate of Assumption," which provided as follows: "This is to certify that the above numbered policy issued by the American Life Insurance Company of Des Moines, Iowa, has been assumed according to its terms, provisions and values by the American Life Insurance Company, Detroit, Michigan, and the American Life Insurance Company, Detroit, Michigan, will carry out all the provisions of said policy and perform all of the obligations therein contained as fully as the same would or should have been performed by The American Life Insurance Company of Des Moines, Iowa, * * *" (Exhibit E—R. 99).

Between the time of the execution of Exhibit A, July 30, 1921, and the execution of Exhibit C, October 24, 1923, new business was continued to be written in the states in which the Michigan company was not admitted by the

Iowa company. The policies written during this interim did not carry the above quoted provisions, but that business is included in the reinsured business and is represented by the deposit continued by the Michigan company with the Insurance Commissioner of the State of Iowa.

The written agreements between the two companies, Exhibits A, B and C, each contained the following provisions:

"5. The transfer hereby made is subject to the requirements of the statutes of the State of Iowa, relative to the deposit with the Commissioner of Insurance of that State of securities representing the net cash value of outstanding contracts of life insurance, endowments, or annuities, and it is understood that many of the securities hereby transferred are now in the custody of said Commissioner of Insurance of the State of Iowa by virtue of deposits made in pursuance of such statutes.

"6. It is further agreed by said American Life Insurance Company, Detroit, Michigan, that the deposits required by the laws of the State of Iowa to be made with the Commissioner of Insurance on all contracts of life insurance, endowments, or annuities issued by said American Life Insurance Company, of Des Moines, Iowa, and hereby reinsured, will be now and hereafter maintained at all times, both in amount and character of securities, as would have been required of said American Life Insurance Company of Des Moines, Iowa, under the laws of said State of Iowa. The amount of such deposit required shall be determined by valuation of policies to be made on January fist and July first of each year" (R69-70).

The Michigan Company maintained the deposit and regularly made the necessary adjustments to maintain the amounts to equal the net equity or legal reserves for the Iowa policies from 1921 until the insolvency proceedings against it on April 12, 1938.

Pursuant to bill of complaint filed on April 12, 1938 the Commissioner of Insurance of Michigan took possession of the Michigan company as custodian, and on June 7,

1938 the Circuit Court for the County of Ingham, Michigan, appointed the Commissioner temporary receiver, all pursuant to the Michigan statute governing the liquidation of domestic insurance companies which reads as follows:

> "12266. *Liquidation; order, filing, contents; powers of commissioner.* Sec. 4. If, on like application and order to show cause, and after a full hearing, the court shall order a liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the commissioner of insurance who may deal with the property and business of such corporation in his own name as commissioner or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all the property, contracts and rights of action of such corporation as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the state, shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. * * *"

The order of the court appointing the temporary receiver contains the following: "Commissioner of Insurance of the State of Michigan be and is hereby appointed temporary receiver of said defendant company and all and singular the property and assets of every nature wherever situated, held, owned or controlled by the defendant company, * * *" (R. 94-96).

The management of the company took an appeal to the Supreme Court of the State of Michigan, which affirmed the decree of the Ingham County Circuit Court. Thereupon on September 16, 1939, the Circuit Court for Ingham County, Michigan, entered an order appointing the Commissioner of Insurance of the State of Michigan Permanent Receiver. That order contains the following: "Commissioner of Insurance of the State of Michigan is hereby appointed Permanent Liquidating Receiver of the American Life Insurance Company, a Michigan insurance

corporation, and of all of its assets and business wherever situated, and by virtue of the statute in such case made and provided, particularly Section 12266, Compiled Laws of Michigan for 1929, is hereby vested with title to all property, assets and business of said company wherever situated, real, personal and mixed of whatever kind or description, statutory or other deposits or pledges of securities, contracts and rights of action, * * *" (R. 97).

On November 17, 1939 the American United Life Insurance Company of Indianapolis, Indiana, entered into a written agreement with the Michigan receiver for the reinsurance of the business of the Michigan company (R. 124). The American United Life Insurance Company issued a certificate of assumption to all outstanding policyholders of the Michigan company. It took possession of all books, records, files, etc. of the Michigan company, including those pertaining to the policyholders originating in the Iowa company, and has since November 17, 1939 been collecting premiums on all outstanding policies (R. 64).

The Iowa company had fully complied with the Iowa statute at the time it reinsured its insurance business with the Michigan company in 1921. There was, however, no Iowa statute then or now requiring a similar deposit by foreign corporations. Section 8652 reads (R. 78):

> "8652—*Foreign companies—capital or surplus—investments.* No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state,* * * and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, * * * which securities shall at the time, be on deposit with the superintendent of insur-

> ance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, *that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company,* the securities above mentioned. This certificate shall embrace the items of security so held, *and show that such officer is satisfied that such securities are worth one hundred thousand dollars* * * *." (italics supplied)

By this section such foreign corporations are required to possess an actual amount of capital equal to that required of any domestic company, which capital must be invested as required by the section and at the time be on deposit with the proper official of the state by whose law the company is incorporated, and the Iowa commissioner must be furnished with a certificate that such deposit is for the benefit *of all policyholders of the company* (R. 77). No other Iowa statute applies to the deposits of foreign life insurance companies.

Under Sections 12390-12391, of the Compiled Laws of Michigan, 1929, which appear as Sections 9326 and 9331 of the Compiled Laws of Michigan, 1915, (Ex. H), the pertinent portions read as follows (R. 91):

> "Sec. 4. The capital of any stock company organized under this act shall not be less than one hundred thousand dollars * * *; and no such stock company * * * shall be authorized to issue policies or assume any risk whatever until they have deposited with the state treasurer, as security for any liability to insured parties, stocks or bonds of the United States or of any state or territory of the United States, or of any city, county, village, township or school district of this state authorized by act of legislature to issue the same, or first mortgage bonds of corporations organized under the laws of the state of Michigan, to the amount in par value, exclusive of interest, of not less than one hundred thousand dollars,

> which stocks or bonds shall be retained by the state treasurer, and disposed of as hereinafter directed: * * * Provided further, That personal obligations secured by first mortgage on improved and productive real estate within this state, worth at least double the amount of the lien and bearing interest of not less than five per cent per annum, may be received by the state treasurer instead of the bonds or stock hereinbefore provided for in this section. * * *
>
> "Sec. 9. The bonds, or stocks and mortgage securities deposited by any such company with the state treasurer, shall be held by him as security for policyholders in such company; * * *".

and Section 12,377, of the Compiled Laws of Michigan, 1929, reads as follows:

> "Sec. 18. Whenever any fire or life insurance company, organized under the laws of this state and desiring to be admitted to do business in any state of the United States or in any foreign country, shall be required to make or maintain a deposit of cash or securities or both in some state for the benefit of its policyholders other than or in addition to the deposit required to be made with the state treasurer under the law of its incorporation, such other or additional deposit may be made and maintained with the state treasurer of this state. *Such deposits so made shall be held by the state treasurer as security for the policyholders of the company making the deposit* and shall be subject so far as applicable to all the provisions of law governing deposits with the state treasurer by legal reserve life insurance companies organized under the laws of this state."

As provided in the contracts, Exhibits A, B and C, securities were withdrawn from the deposit with the Iowa Insurance Commissioner by the Michigan company and securities of the same kind and character deposited in lieu thereof, but at all times the face amount of the de-

posit was in an amount equal to the legal reserves upon the policies of insurance which originated in the Iowa company as required by the contracts (R. 20). The withdrawal and substitution of securities by the Michigan company was continued to April 12, 1938, and on that date all securities, except five items of the face value of approximately $30,000.00, were substituted securities and were not a part of the deposit at the time of the execution of the contracts (R. 57). The Michigan company collected all income from the securities and handled all administrative matters connected with the securities. There were no written assignments of the securities, so only the bare physical possession was in the Iowa Insurance Commissioner (R. 57).

From 1921 to 1938 the Michigan company operated in various states of the Union, including Iowa and Michigan. Pursuant to the statutes of the several states, annual reports showing the financial condition of the company were filed with the insurance commissioners (R. 58). The Michigan company filed such reports with the Iowa Insurance Commissioner as well as the Michigan Insurance Commissioner as of December 31, 1921 to as of December 31, 1937. Except for the report of December 31, 1937, at no time did the report disclose that a part of its assets were deposited in the State of Iowa for the exclusive protection of policies originating in the Iowa company, but rather the reports stated just the contrary. As to the statement of December 31, 1937 at the examination of the company which found it insolvent, upon the insistence of the Iowa examiner, such a statement appeared in the report. No license to do business was issued upon this report in any state (R. 177).

On November 17, 1938 there were 4,313 policyholders in the Michigan company who originated in the Iowa company, representing insurance in force in the amount of $6,657,364.82. These policyholders were distributed among 41 different states of the Union, as well as Canada, Philippine Islands, Hawaii, Porto Rico, and South America. Of these policyholders 1,535 were residents of the State of Iowa, representing insurance in force in the amount

of $2,456,039.00, or 36.89% of the group. Also resident in Iowa were 1,707 policyholders who originated in the Michigan company, representing $2,315,543.70 insurance in force, which, under the theory of the respondent, are not protected by the Iowa deposit.

Upon notice of the reinsurance agreement given them by the Michigan receiver, and receipt of the assumption certificate from the American United Life Insurance Company, only 81 policyholders originating in the Iowa company dissented (R. 62). All the rest have accepted the reinsurance agreement, and look now to the American United Life Insurance Company for the fulfillment of their policy contracts. The 81 policyholders who dissented filed claims for the value of their policies with the Michigan receiver for submission to the Circuit Court for the County of Ingham, in Chancery, Michigan (R. 62).

JURISDICTION

The grounds of jurisdiction are:

(1) The date of the judgment to be reviewed is September 22, 1942, that being the date of denial of petition for rehearing with respect to judgment entered July 30, 1942.

(2) The judgment was rendered in an action between citizens of different states.

(3) The statute under which the jurisdiction is invoked is Section 240 of the Judicial Code as amended by the Act of Feb. 13, 1935.

THE QUESTIONS PRESENTED

I.

The Circuit Court of Appeals of the Eighth Circuit was in error in holding that Sections 8661-63, of the Insurance Laws of Iowa, pertaining to domestic life insurance companies, expressed the local policy of Iowa as to the rights of the domiciliary receiver of a foreign insur-

ance company as to securities deposited in Iowa; and in failing to hold that Section 8652 of the Insurance Laws of Iowa pertaining to foreign life insurance companies was the only statutory expression of Iowa local policy; and in finding that the decisions of the Supreme Court of Iowa expressed a local policy denying the domiciliary receiver of a foreign insurance company's title to securities deposited in Iowa by a foreign life insurance company in the absence of a claim of a lien by an attachment or judgment resident creditor; and in holding that the Commissioner of Insurance of Iowa had lien or trust rights in the securities for the benefit of the policyholders of the dissolved Iowa company as against the Michigan company or its other policyholders, including many Iowa residents, and contrary to the doctrine of local policy as expressed by this Court in Clark v. Williard, 294 U. S. 215, 79 L. Ed. 869.

II.

The Circuit Court of Appeals was in error:

(a) in failing to hold that all of the policyholders of the Iowa company had accepted the jurisdiction of the Michigan court by electing to take the reinsurance provided by that court or electing to come under the jurisdiction of the Michigan court for the adjudication of their claims;

(b) in holding that the condition existing on June 17, 1938 controlled instead of the date the record was made.

(c) in holding that the Michigan company was substituted for the Iowa company in the performance of the obligations of the Iowa company to its policyholders under the Iowa statutes governing domestic life insurance statutes; and

(d) in failing to hold that the domiciliary receiver succeeded to all of the rights and powers of the Michigan company.

When the record was made, the domiciliary receiver had settled the claims of all of the policyholders by pro-

viding reinsurance for all but 81 (subsequently reduced to 65). Each of the latter policyholders had elected to recognize the jurisdiction of the Michigan court by filing his claim with the Michigan receiver where claims were adjudicated. The question before the court, therefore, having become moot subsequent to the filing of the complaint.

III.

The Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings in its opinion of July 30, 1942, as to render chaotic all receivership proceedings involving life insurance companies:

(a) by failing in its original opinion of July 30, 1942 to recognize established principles of the rights of domiciliary receivers, and in failing in its opinion of September 22, 1942 on denial of motion for rehearing to give full faith and credit to the laws of the State of Michigan placing title to all assets of the receivership in the domiciliary receiver, subject only to lien rights of resident creditors of a given state if so established by local policy, thus rendering impossible the administration of the assets of an insolvent company by the domiciliary receiver or its grantee and vendee in accordance with efficient, economical and orderly liquidation of assets of insolvent life insurance companies;

(b) in failing to definitely and directly hold, although the question was before it, that the Michigan court had jurisdiction of all the property of the trust wherever located except as to property physically located within the State of Iowa or amenable to process issued from Iowa courts on suit of resident creditors of that State if such is the local policy of Iowa.

(c) in finding that the securities in suit were deposited for sole benefit of the policyholders originating in the Iowa company in absence of evidence thereto; and in face of express provisions of contract that relate only to amount and character of the securities.

(d) in finding that, "The Michigan receiver and the Indiana company contend here that *many* of the policyholders of the old Iowa company have lost their rights to the benefits of the Iowa deposit, by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana company," although it was stipulated in the record that *all* of the policyholders of the Iowa company had made such elections, thereby rendering the entire case moot.

REASONS RELIED UPON FOR THE GRANTING OF WRIT OF CERTIORARI

The discretionary power of this Court is invoked upon the following grounds, being those included among the grounds enumerated in Rule 38 of the Rules of this Court.

1. The Circuit Court of Appeals decided an important question of local law in a way probably in conflict with applicable local decisions and contrary to local statutes.

2. The Circuit Court of Appeals decided an important question of general law in a way probably untenable or in conflict with the weight of authority.

3. The Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioners respectfully pray that this Court grant a writ of certiorari under Judicial Code, Section 240, as amended, to be issued out of and under the seal of the Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to remove therefrom for review here the record in the cause therein pending, No. 11852, Civil, wherein your petitioners are appellants, and the respondent appellee, and that the said opinion, judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed by this Court, and that petitioners have such

other and further relief in the premises as to this Court may seem equitable and just.

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By: Clayton F. Jennings.

BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinion of the Circuit Court of Appeals Is Contrary to the Local Policy of Iowa As Appeared In Its Statutes and Court Decisions.

This case has once been before this Court on the question of jurisdiction over the subject matter of the District Court of the United States for the Southern District of Iowa under Section 57 of the Judicial Code. In an opinion filed January 5, 1942 this Court held that the District Court had jurisdiction and remanded the case to the Circuit Court of Appeals to decide what rights under the Iowa law, Iowa and its Receiver had to the securities and collection thereon and whether the decree entered by the District Court was kept within the appropriate limits. 314 U. S. 594, 62 S. C. 380, 86 L. Ed. 328.

After reargument the Circuit Court of Appeals held that the local policy of Iowa as to the rights of the Domiciliary Receiver of a foreign insurance company in securities deposited in Iowa was expressed by Section 8861-63 of the Insurance Laws of Iowa pertaining to domestic life insurance companies. (130 Fed. (2d) 643).

This action was not brought by a resident policyholder of the State of Iowa nor by a judgment creditor of the American Life Insurance Company resident of Iowa, claiming a lien upon the deposit in question. The action was brought by the Insurance Commissioner of the State of Iowa who was custodian of the deposit prior to the insolvency of the American Life Insurance Company, and subsequently Receiver of the deposit. As plaintiff he made no claim that he instituted this suit to protect citizens of the State of Iowa. He ignored the rights of 1707 policyholders who originated in the Michigan company, representing over $2,300,000 of insurance in force, who are residents of the State of Iowa. He claims that he is attempting to protect the rights of 4313 policyholders scat-

tered through 41 different states and several foreign countries, of whom 1535 are residents of the State of Iowa.

It is the contention of Petitioners that Sections 8861-63 of the Insurance Laws of Iowa, relied upon by the Circuit Court of Appeals, could not express the local policy of the State as to foreign insurance companies which fall under the provisions of Section 8652 of the Insurance Laws of Iowa (quoted in Facts) which provides that any deposit is "for the benefit of all the policyholders of such company." It appears, therefore, that the policy of Iowa, correctly interpreted, recognizes the doctrine that all policyholders of an insurance company shall share equally and there is no provision by which any group of policyholders shall have superior rights to any other group of policyholders, which is the result of the decision of the Circuit Court of Appeals.

Creditors resident of a state were recognized to have a preference by this Court in the case of *Clark v. Williard,* 292 U. S. 112, 78 L. Ed. 760, 294 U. S. 211, 79 L. Ed. 865. In that case, twice before this Court, although involving a surety company, the right of a resident creditor under a judgment obtained against the insurance company was recognized by local policy to have preferential rights. The decision of the Circuit Court of Appeals in the instant case applied a statute which had no relation to foreign life insurance companies such as the Michigan company. It relied upon decisions of the Supreme Court of Iowa which petitioners contend did not establish a doctrine of local policy such as was found by the Circuit Court of Appeals.

The leading case in the State of Iowa on the question of local policy is *Schloss vs. Metropolitan Surety Company,* 149 Iowa 382, 128 N. W. 384. In that case where a surety company was involved, a suit had been instituted by a resident of the State of Iowa prior to the decree of dissolution because of the insolvency of the company. The plaintiff sought to enforce a judgment obtained against assets found within the State of Iowa. It was held that title to the assets was in the official liqui-

dator, but subordinate to the lien of the plaintiff who was an attaching creditor and the assets were not subject to a superior claim of the domiciliary receiver seeking to remove the assets found in the State of Iowa before satisfying the claim of the attaching creditor.

The local policy of the State of Iowa as expressed by the *Schloss* case falls far short of establishing a right in the Iowa Receiver in the case at bar to retain, liquidate and administer the assets in question, or to permit him the relief prayed for in his complaint.

More recently, and again involving a surety company, the local policy of the State of Iowa as to a resident *attaching* creditor has been expressed in the case of *Watts vs. Southern Surety Company,* (1933) 216 Iowa 150, 248 N. W. 347.

It is submitted that these decisions, one as to judgment creditor and one as to an attaching creditor, do not establish a local policy of the State of Iowa as to policyholders of a life insurance company who are not judgment creditors or attachment creditors. On the contrary, as expressed in Section 8652. Insurance Laws of the State of Iowa, the principle that equality is equity is recognized in Iowa as in Michigan. The policy of Iowa extends only so far as to protect residents of the State on contract claims arising within the State of Iowa against a foreign corporation, even though in receivership. This policy does not permit appellee to retain, liquidate and administer the assets in question, nor has this policy ever been extended to life insurance companies in Iowa or in any other state.

Under the laws of Michigan deposits made by domestic companies, and the American Life Insurance Company was a domestic company, were established for the benefit of all the policyholders. Sections 12390-91, Compiled Laws of Michigan, 1929 (Sections 9326 and 9331, Compiled Laws of Michigan, 1915) and Section 12377, Compiled Laws of Michigan, 1929 (see Facts for quotations).

The cases cited do not involve life insurance companies. The claim of a policyholder for the cash value of his policy is quite a different sort of claim than that arising by contract. This principle has been recognized in *Fry v. Charter Oak Life Insurance Company*, 31 Fed. 197, where a distinction is drawn between the rights of a general creditor of an insolvent life insurance company and the claim of a policyholder. See also *Parsons vs. Charter Oak Life Ins. Co.*, 31 Fed. 305. A policyholder of a life insurance company consents to be bound by the laws of the state of the company. Creditors other than policyholders have never made such election, nor had an opportunity to do so. Consequently, life policyholders have always been placed in a preferred position over general creditors. Deposits by life insurance companies are for the exclusive benefit of policy creditors. *Palmer vs. State Life of Illinois*, 296 Ill. App. 985, 15 N. E. (2d) 985. This principle is in accordance with the provisions of the statutes of both Michigan and Iowa under which such deposits are for the benefit of all of the policyholders regardless of state lines. But policyholders in one state have no preference over those in another state. *Taylor vs. Life Association of America*, 13 Fed. 493.

In the case at bar, it is clear that there is not involved a claim by citizens of Iowa, as such, against assets located in that state. The policyholders whom the Iowa Receiver assumes to represent made their election in 1921 to accept the Michigan company, and in 1939 to accept the American United Life Insurance Company for their insurance protection. After such election was made the Iowa company was dissolved. Now through the process of receivership the Michigan company has likewise come to an end. All of the policyholders who have not accepted the insurance protection of the American United Life Insurance Company have recognized the jurisdiction of the Michigan Court by filing their claims with the Receiver in that Court for action by the Court and in no instance has a policyholder sought the protection of the Iowa Courts as to any claim made by him or on his behalf.

The Circuit Court of Appeals in its decision as to the local policy of the State of Iowa and as to the rights of the Receiver in the State of Iowa went far beyond any doctrine of local policy established by the statutory law of Iowa or the decisions of its Supreme Court. The doctrine of local policy permits a state to protect its citizens by granting them liens on assets within the state superior to the rights of a foreign receiver or liquidator. This doctrine has never been extended to protect residents of foreign states, much less of foreign countries. The State of Iowa, either in its statutes or in the decisions of its Supreme Court, has not attempted to protect any but its own citizens. In the case at bar no Iowa citizen or resident holds a judgment or an attachment against the assets in issue, nor is any claim asserted against those assets. The claims of all Iowa residents have been settled by the domiciliary receiver.

II.

The Decision of the Circuit Court of Appeals Decided An Important Question of Local Law in a Way Probably Untenable or in Conflict With the Weight of Authority.

(a) The record discloses by stipulation of the parties that at the time of the reinsurance of the Michigan Company by the American United Life Insurance Company, there were 4,313 policyholders who originated with the American Life Insurance Company of Des Moines, distributed among 41 different states as well as Canada, the Philippine Islands, Hawaii, Porto Rico, and South America. Of these policyholders 1,535 were residents of the State of Iowa. All of the policyholders who originated in the American Life of Des Moines, except 81, accepted the reinsurance agreement entered into with the American United Life Insurance Company and the 81 policyholders mentioned (subsequently reduced to 65 by withdrawal of claims) filed claims with the Michigan Receiver for submission to the Michigan court. (Record pages 62). It has been accepted without question that no affirmative action is necessary to create a liability un-

der a reinsurance agreement and that the acceptance of an assumption agreement duly issued by a reinsuring company is presumed by inaction on the part of the insured.

Gilfillan v. Union Canal Co., 109 U. S. 401, 3 S. Ct. 304.

The record discloses that all of those policyholders of the original Des Moines group who did not dissent following their acceptance of the reinsurance by the American United Life Insurance Company have paid premiums to the American United since the date of the reinsurance agreement, November 17, 1939. (R. 64). The dissenting policyholders, numbering 81 of the original 4,313, (less than two percent) expressed their dissent by filing claims with the Receiver for submission to the Michigan court, thereby recognizing the jurisdiction of the Michigan court for the purpose of determining any rights which they might have. The facts, as disclosed by the stipulation, demonstrate that all of the policyholders in the group for whom the plaintiff would appear to speak have accepted the jurisdiction of the Michigan court in one or the other of the two available methods; namely, either accepting reinsurance provided by the Michigan court or by filing claims. It is further to be noted that the only policyholders for whom the plaintiff has sought to speak are those remaining from the original American Life Insurance Company of Des Moines. The Des Moines Company was reinsured by the Michigan Company by three reinsurance contracts the last dated October 24, 1923 (Record page 56) and all under the provisions of Iowa law covering reinsurance. Thereafter and to the present date no Iowa Company exists. The original policyholders of the nonexistent Iowa Company after its dissolution looked only to the Michigan Company for any insurance protection. To the Michigan Company for almost twenty years they paid their premiums and until its insolvency death claims were duly filed and paid. The Michigan Company occupied the position of the original Iowa Company in every sense and by novation the Iowa Com-

pany policyholders became Michigan Company policyholders. *Hobbs v. Accidental Life Insurance Co.*, 87 Fed. (2d) 380 (Certiorari denied 305 U. S. 603).

Following the insolvency of the Michigan Company and after its reinsurance by the American United, the surviving members of the original Iowa group then ceased to look to the Michigan Company for insurance protection but thereafter looked only to the American United for insurance protection excepting as to those few persons who dissented from the tendered reinsurance and accepted the jurisdiction of the Michigan court by filing their claims in that court. In regular course the Michigan company came to an end (Record page 597) and again by novation the same group became policyholders of the American United.

A recognition of the facts requires a recognition of the legal liability of the respective parties to the insurance. Solely responsible for the insurance of the survivors of the Iowa group (subject only to Section 36 of the Reinsurance Agreement, (R. 149), is the existing insurer; namely, the American United Life Insurance Company, the successor by reinsurance of the rights of the Michigan Company in 1939 which in turn has succeeded to the rights of the Iowa Company by the Reinsurance Agreements executed in 1921, 1922 and 1923. Subject to such changes, if any, as might ultimately be worked out in the course of the litigation between the parties to the case at Bar the Reinsurance Agreement between the Insurance Company and the American United represents the only basis of liability to the surviving policyholders of the Iowa Company.

(b) In determining that June 17, 1938 was a controlling date, the court failed to take into consideration the fact that thereafter and prior to the time that the record was made in the case at Bar every policyholder of the Iowa group had come under the jurisdiction of the Michigan court either by accepting the reinsurance provided by that court or by filing claims in that court. This action was instituted by a complaint filed January 2, 1940

and the decree (197) of the District Court, was filed on June 24, 1940. The effort of the plaintiff to make it appear that he speaks for and on behalf of certain policyholders of the Iowa Company is subject solely to the condition existing as shown by the record. It appears that any question concerning the rights of the Iowa policyholders at the time when the record was made did not involve policyholders of the Iowa Company and is a moot question, no longer subject to any requirement of consideration by the court. *United States vs. Hamburg Amerikanische Packet Co.*, 239 U. S. 466; 36 Sp. Ct. Rep. 212; 60 L. Ed. 387.

(c) With the reinsurance of the Iowa Company in 1921-22-23, which reinsurance was carried into effect pursuant to the laws of Iowa providing for the reinsurance of a domestic company under which laws the assets of the company could be used for the purchase of reinsurance, all of the insurance and the assets of the company were transferred to the Michigan company which thereafter became the sole insurer and the Iowa company ceased for all purposes to exist and was duly dissolved. The Michigan company was at no time a domestic company but on the contrary was at all times a foreign company subject to the laws of Iowa affecting foreign companies. Although a certain contractual obligation was assumed relative to a deposit in the state of Iowa that contractual obligation was affected by a foreign life insurance company and cannot be tested by any law affecting a domestic life insurance company. The assets in issue constituted a contractual deposit and not a statutory deposit. A recognition of the facts as they exist makes evident therefore that the Michigan company could in no sense be considered as substituted for the Iowa company and by the same token the domestic company's statutes could not apply to a foreign company. The court therefore appears clearly to have been in error in holding that the Michigan company was substituted under the Iowa domestic life insurance company statutes for a dissolved Iowa company in the performance of the reinsurance obligations of the Iowa company. The domes-

tic company statute was referred to in the contract for the sole purpose of determining the amount and the character of the contractual deposit.

(d) Under the laws of the State of Michigan a Receiver succeeded to all the rights and powers of an insurance company.

(e) The Circuit Court of Appeals was in error in failing to recognize that under the laws of Michigan the Receiver succeeded to all of the rights of the Michigan Company.

The proceedings under the Michigan statute were instituted on April 12, 1938, some 60 days prior to initiation of any proceedings in Iowa, and in regular course the Commissioner of Insurance of the State of Michigan was appointed statutory receiver and by operation of the statute all assets of the American Life Insurance Company, including the Iowa deposit, vested in him. With the filing of the case the jurisdiction of the Michigan Court attached and thereafter the Michigan Court, or its Receiver, was charged with the full responsibility of handling the affairs of the Michigan Company as stated by this Court in *Relf v. Rundle*, 103 U. S. 222, "By the character of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs."

The record discloses that title to all of the property was vested in the Michigan Company despite the fact that the physical possession or custody of some of the property was from time to time in others. Upon dissolution of the Company by receivership the Michigan law recognizes that the Commissioner became a statutory receiver in the same manner as in *Clarke v. Williard*. The domiciliary receiver became empowered to liquidate those assets and to him, and to him alone, all policyholders must look for a determination of their rights, including those

policyholders originally in the Iowa company. The rule is well stated by this Court as follows:

> "Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. (Citing cases). Possession of the res disables other courts of coordinate jurisdiction from exercising any power over it. (Citing cases). The court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto. It has the right, while continuing to exercise its prior jurisdiction, to determine for itself how far it will permit any other court to interfere with such possession and jurisdiction. (Citing cases)."
>
> *Lion Bonding and Surety Co. v. Karatz*, 262 U. S. 77, 78; 67 L. Ed. 871, 880.

The Federal Courts have always recognized that the receivership of a life insurance company should be the particular concern of the Court by reason of the widely distributed interests of many persons, each of whom represents but a very small portion of the total assets but that small portion of great importance to the individual holder. That thought has been well expressed as follows:

> "Experience has demonstrated that, in order to secure an economical, efficient, and orderly liquidation and distribution of the assets of an insolvent corporation for the benefit of all creditors and stockholders, it is essential that the title, custody, and control of the assets be intrusted to a single management under the supervision of one court. Hence, other courts, except when called upon by the court of primary jurisdiction for assistance, are excluded from participation. This should be particularly true as to proceedings for the liquidation of insolvent

insurance companies for the reasons adverted to by Mr. Justice Cardozo in Clark v. Williard, 292 U. S. 112, 123, 54 S. Ct. 615, 620, 78 L. Ed. 1160."

Motlow v. Southern Holding & Securities Corporation, 95 Fed. (2d) 721.

Carrying the same idea further and with appreciation of the confidence properly placed in the integrity of the courts the recent expression of a trial court in support of this theory is:

"A court of competent jurisdiction has taken over the Federal Reserve Life Insurance Company. It becomes the duty of the court to direct the collection by its receiver of all the assets of the company so that same can be equitably and properly applied to the discharge of the obligations of said company. The court alone is capable of determining what priorities, preferences, and liens may be allowed and enforced against said assets. The responsibility of the superintendent of insurance as an executive officer is completely discharged when a court, whose duty it is to administer the estate, calls for a surrender and delivery of said assets. 32 C. J. Sec. 12, p. 98.

"The superintendent of insurance cannot properly disregard the demands of a court in the regular routine administration of an estate. Granted that such securities are impressed with a lien, the court must be trusted to hold a disposition to enforce such liens. It is unimportant that a reinsurance may have been effected in another company under the direction of the court. The chancellor must have a free hand to direct the conversion or sequestration of assets for the protection of any class of creditors."

Holloway v. Federal Reserve Life Insurance Co., 21 Fed. Sup. 516.

It is, therefore, the position of petitioners that since the state of Michigan has a comprehensive method for winding up the affairs of a Michigan Insurance Company no Court, State or Federal, in any other jurisdiction can interfere with the liquidation of the assets of a Michigan insolvent company no matter where such assets may be located and it is further contended by petitioner that under the jurisdiction of the Michigan Court the rights of all policyholders, including those of the Iowa group were recognized and given full force and effect. As has been emphasized heretofore, all of the policyholders have accepted that jurisdiction and in view of the fact that the average age of all the policyholders is in excess of 60 years (Record page 166) it follows that it would be difficult, if not impossible, for those policyholders to secure other insurance. Consequently, their rights are most adequately protected by including them in the larger group where, under good insurance practice, the risk involved is spread over a large number, thereby giving to the comparatively small group of Iowa policyholders benefits impossible of attainment if considered alone.

Under the Michigan law the domiciliary receiver succeeded to all of the rights and powers of the insolvent company and in failing to recognize that principle, as applied to the interests of the policyholders, as set out herein, the Circuit Court of Appeals not only seriously harmed the policyholders affected by its decision but failed to recognize well established principles of law.

III.

The Decision of the Circuit Court of Appeals Was Such a Departure from the Accepted and Usual Course of Judicial Proceedings As to Call for An Exercise of This Court's Power of Supervision.

(a)

The Circuit Court of Appeals in its opinion failed to recognize established principles of the rights of domiciliary receivers of life insurance companies. We have

pointed out above the manner in which the Circuit Court of Appeals misconstrued the local policy of the State of Iowa. In finding that the Michigan receiver as domiciliary receiver had no rights whatsoever in the contractual deposit in the State of Iowa, it refuted and overruled the case of *Relf v. Rundle,* 103 U. S. 222, 26 L. Ed. 337.

The decision denies full faith and credit to the statute of the State of Michigan, Section 12266, C. L. Michigan, 1929, whereby the domiciliary receiver was vested by operation of law with title to all of the assets of the American Life Insurance Company. In the case of *Clarke vs. Williard,* 292 U. S. 112, 78 L. Ed. 1160, the Montana Supreme Court denied full faith and credit to the statutes and judicial proceedings of Iowa in holding that the petitioner was a receiver deriving title through a judicial proceedings and thereby denying to the petitioner title to assets in Montana. This Court held in that case that the Supreme Court of Montana had in violation of the Federal Constitution denied full faith and credit to the statutes and judicial proceedings of Iowa. In the case at bar the decision of the Circuit Court of Appeals just as effectively denies full faith and credit to the Michigan statute and to proceedings in the Michigan courts involving this receivership, as did the Montana court in the *Williard* case. Assets of life insurance companies are necessarily scattered throughout the many states. It is only by such principles as are laid down in *Relf v. Rundle, supra,* and *Clark v. Williard, supra,* that the assets of an insolvent life insurance company may be administered by the domiciliary receiver or its grantee or vendee in accordance with efficient, economical and orderly liquidation. The denial of those principles by the Circuit Court of Appeals is such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

(b)

By Paragraph 36 of their respective counter-claims the receiver of the American Life Insurance Company and the American United Life Insurance Company prayed for

the delivery of all of the assets on deposit in Iowa to the domiciliary receiver for such distribution and reorganization as might be decreed by the Circuit Court for the County of Ingham in Chancery of the State of Michigan, subject only to the local policy of a particular state and of the administration of such assets by the Ingham County Court pursuant to such policy, if any, of the State of Iowa. The Circuit Court of Appeals failed to give any consideration to that prayer.

This Court in *Relf v. Rundle,* 103 U. S. 222, 26 Law Ed. 337, held that the title to assets of an insolvent life insurance company passed to the domiciliary receiver as a consequence of a succession established for the corporation by the law of its creation. A limitation was placed upon this doctrine in the case of *Clark v. Williard,* 292 U. S. 112, 78 L. Ed. 1160, to the extent that if it was the local policy of a state expressed in statute or decision whereby judgments and attachments have a preference over the title of a charter liquidator, title of the domiciliary receiver to local assets was subject to the claims of local creditors. After the State of Montana through its Supreme Court had held that the local policy of the State permitted attachments and executions against insolvent corporations, foreign and domestic, and that such rule would prevail against a statutory successor clothed with title to the assets, *Clark v. Williard* again came before this Court in 294 U. S. 212, 79 L. Ed. 865. It was then held that in recognition of the newly expressed local policy of the State of Montana the title of the foreign liquidator was recognized but there was imposed upon such ownership the liens of judgments and executions in conformity with local law. The Circuit Court of Appeals failed to recognize that the *Clark v. Williard* cases laid limitations upon the title to the local assets within the State only and had no application to assets without the State. In so doing it departed from the accepted and usual course of judicial proceedings.

(c)

The Circuit Court of Appeals in its opinion found that the securities deposited in the State of Iowa were depos-

ited in trust for the sole benefit of the policyholders originating in the Iowa company. There was no testimony in the record to that effect. The contracts were in evidence, and it is only from them that any assumption could be made as to the purpose of the deposit. The most that could be assumed from the contracts themselves was that a reference was made to the domestic life insurance company statute of Iowa for the purpose of measuring the character and amount of the securities to be deposited with the Iowa Commissioner under a contractual relationship. This contractual deposit consisted of personal property. To establish a trust of personal property the evidence must be clear and convincing, not doubtful, uncertain and contradictory. *Allen v. Withrow*, 110 U. S. 119, 28 L. Ed. 90. Such a finding was likewise a departure from the accepted and usual course of judicial proceedings.

(d)

The Circuit Court of Appeals departed from the record when it stated, "The Michigan Receiver and the Indiana Company contend that *many* of the policyholders of the old Iowa Company have lost their rights to the benefits of the Iowa deposit by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana Company". It is not the contention of the Michigan Receiver and the Indiana Company that *many of the policyholders* of the old Iowa Company have lost their rights to the benefit of the Iowa deposit by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement, but on the contrary it is the contention, as stipulated in the record (Paragraph 18), that *all* of the policyholders have so accepted the jurisdiction of the Michigan Court and that the Iowa receiver in attempting to speak for certain policyholders who have so accepted the jurisdiction of another court is a mere volunteer who, if successful in his endeavor, would be powerless to effect any benefit for any person, all of whom have accepted by their own act the jurisdiction of another court fully qualified to recognize their rights, whatever they may be,

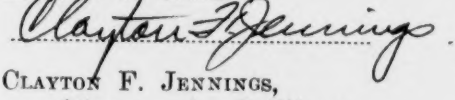
and grant any preferential treatment that either statutes or contracts may authorize. The Circuit Court of Appeals should have adhered to the record which showed that all of the policyholders had made an election, and that since those policyholders were the only persons who could assert any claim in the deposit, that there was nothing over which the Iowa Court could take jurisdiction. *Lovell v. St. Louis Mut. Life Ins. Co., et al.*, 111 U. S. 264, 28 L. Ed. 423; *Larsen v. Pac. Mut. Life Ins. Co.*, 373 Ill. 614, 27 N. E. 458; *Phipps, et al. v. Chicago, R. I. & P. R. R. Co.*, 284 Fed. 945. Therefore the question as to the right of the Iowa Commissioner in his facilitating capacity as receiver or the Iowa Court to the assets in question has become moot. *Commercial Cable Co. vs. Burleson*, 250 U. S. 360; 30 Sup. Ct. Rep. 512; 63 L. Ed. 1030.

CONCLUSION

We believe that in the foregoing brief we have raised questions which entitle this case to a review by this Court. We believe that the decision of the Eighth Circuit Court of Appeals throws the present receivership into a chaotic condition. The questions involved go to the rights of citizens of 41 different states. It is essential in preserving the rights of those citizens that the domiciliary receiver have a clear cut declaration as to his rights and duties in the same manner that this Court made such a declaration of rights and duties in the case of *Relf v. Rundle.*

Respectfully submitted,

EDMUND C. SHIELDS,



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

AMERICAN UNITED LIFE INSURANCE COMPANY, EUGENE P. BERRY, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of The American Life Insurance Company of Detroit, Michigan, and DAN E. LYDICK, Receiver of The American Life Insurance Company of Detroit, Michigan, in Texas, *Petitioners*,

vs.

CHARLES R. FISCHER, Commissioner of Insurance of the State of Iowa, as Receiver for The American Life Insurance Company, *Respondent*.

RESPONDENT'S RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

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CASES CITED IN ARGUMENT.

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RESPONDENT'S RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The facts have been fully stated in the first opinion of the Circuit Court of Appeals, 117 Fed. (2d) 811, the opinion of the Supreme Court of the United States, 314 U. S. 549, 62 S. Ct. 380, 86 Law Ed. 444, and are summarized in the last opinion of the Circuit Court of Appeals in 130 Fed. (2d) 643. It is not deemed necessary to make an additional statement.

The Supreme Court reversed and remanded this cause to the Circuit Court of Appeals for further proceedings in conformity with its opinion and decision, stating:

> "We only hold that the District Court had jurisdiction to resolve the controversy under Sec. 57 of the Judicial Code, 28 USCA, Sec. 118. The Circuit Court of Appeals should have decided what rights under Iowa law, Iowa and its receiver had to the securities and the collections thereon and whether the decree entered by the District Court was kept within the appropriate limits."
>
> *Fischer* v. *American United L. Ins. Co., et al.*, 314 U. S. 549, 62 S. Ct. 380, 86 L. Ed. 444, at 452.

In compliance with this mandate, the Circuit Court of Appeals on resubmission, by unanimous decision, declared the law and policy of Iowa in accordance with its statutes and the decisions of its Supreme Court upon the facts in this case, stating:

> "We therefore hold that, under the law of Iowa, title to the securities of the Michigan company, maintained with and in the hands of the Iowa Insurance Commissioner, at the time the Michigan company became insolvent, in fulfillment of its obligation under the reinsurance agreement with the old Iowa company, has become vested in the State of Iowa, and that the Iowa Insurance Commissioner, on behalf of the State, in his official capacity and in his capacity as statutory receiver, has the right, independent of any domicilliary or ancillary receivership of the Michigan company, to administer such securities for the benefit of the policyholders of the old Iowa company. The rights of the Iowa Insurance Commissioner include, as an incident of the vesting of title in the State, the right to receive and collect all payments of interest, dividends, and principal that may thereafter be made. It includes also, of course, as a necessary incident, the vesting of any existing collateral upon the securities."
>
> *American United L. Ins. Co., et al.* v. *Fischer*, 130 Fed. (2d) 643, at 647.

The trial court's decree granted incidental relief which was modified by the Court:

> "The trial court's decree will accordingly be modified to eliminate the provisions for incidental relief granted, and to make the date of the vesting of the title to the securities in the State of Iowa conform to the recital in the receivership decree of the Iowa state court, and, as thus modified, the judgment will be affirmed."
>
> *American United L. Ins. Co., et al.*, v. *Fischer*, 130 Fed. (2d) 643, at 648.

On petition for rehearing filed by the Texas Receiver the Court exemplified its declaration of Iowa law and policy and applied the rule clearly settled in the case of *Clark* v. *Williard*, 294 U. S. 211, 55 S. Ct. 356, 357, 79 L. Ed. 865, 98 A. L. R. 347.

The opinion and decision of the Circuit Court of Appeals is a clear and correct statement of the law and policy of Iowa applied to the facts of record and adheres strictly to the principles stated by the Supreme Court in its opinion and decision of this case. Respondent relies upon these decisions to support a denial of the Petition for Certiorari.

In asserting the decision of the Circuit Court of Appeals is contrary to the law and policy of Iowa, petitioners base the argument upon the same authorities submitted to this Court to defeat the jurisdiction of the Federal Court. Petitioners' call for an exercise of the Court's power of supervision of the decision of the Circuit Court of Appeals is again founded on the principle in *Relf* v. *Rundle*, 103 U. S. 222, 26 L. Ed. 337, coupled with the claim that the decision of the Circuit Court of Appeals is in conflict with the weight of authority.

While the Supreme Court expressed no opinion on the merits of the controversy, it is significant to note the very question upon which the petition for certiorari is grounded was considered by the Court when it stated the following:

"It is immaterial to this inquiry whether the Michigan receiver acquired no interest in or power over assets outside of Michigan (*Booth* v. *Clark*, 17 How. (U. S.) 322, 15 L. Ed. 164), or, as held by the court below, was a statutory successor under Michigan law of American Life Insurance Co. and as such had title to all of its assets wherever situated. *Relfe* v. *Rundle* (*Life Asso. of America* v. *Rundle*), 103 U. S. 222, 225, 26 L. Ed. 337, 339; *Clark* v. *Williard*, 292 U. S. 112, 120, 78 L. Ed. 1160, 1165, 54 S. Ct. 615. Cf. *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. Ed. 749, 32 S. Ct. 415, Ann. Cas. 1913D 1292. Even though the latter were true, claimants entitled to the benefits of the fund in Iowa might pursue their suits and remedies against it in derogation of the claim of the Michigan receiver, if that were Iowa's policy. *Clark* v. *Williard*, 294 U. S. 211, 79 L. Ed. 865, 55 S. Ct. 356, 98 A. L. R. 347. That is the asserted Iowa policy here. The Iowa receiver is in possession of the securities in question. He seeks, with the approval of the Iowa court, an authoritative determination by the federal court of the question whether under Iowa law those securities and the collections thereon should not be held for the special class of claimants for whom the fund was allegedly established. The federal court has the power to resolve the controversy."

Fischer v. *American United L. Ins. Co., et al.*, 314 U. S. 549, 62 S. Ct. 380, 86 L. Ed. 444 at 450.

The Circuit Court of Appeals has followed the foregoing direction and applied the law in its decision.

To apply the principle in the case of *Relf* v. *Rundle*, petitioners would have the Court nullify all the applicable statutes of the State of Iowa and substitute in lieu thereof the statutes of the State of Michigan. (See Iowa statutes Appendix "A".)

Petitioners would have this Court ignore the provisions of the reinsurance contract between the Michigan (Detroit) and Iowa (Des Moines) companies, the provisions of the Iowa company's policy contract, and the provisions of the Michigan company's assumption agreement. (See Appendix "B".)

Petitioners would have this Court overrule the principles stated in the decisions of the Supreme Court of Iowa, *Schloss* v. *Metropolitan Surety Company*, 149 Iowa 382, 128 N. W. 384, 385; *State ex rel. Gibson* v. *American Bonding & Casualty Company*, 206 Iowa 988, 221 N. W. 585; *Watts* v. *Southern Surety Company*, 216 Iowa 150, 248 N. W. 347, and substitute decisions of courts of other jurisdictions where the facts are not comparable and the rules are not applicable in the determination of the question of the law and policy of the State of Iowa.

Considering the facts in this case, the statutes of Iowa and the law of the Supreme Court of Iowa, it seems clear the position of the petitioners cannot be sustained.

Again it is claimed, the holders of policy contracts originating in the Iowa company have lost their rights to the benefits of the securities deposited for their benefit in Iowa.

In *ex parte* proceedings the Michigan State Court attempted to adjudicate the rights of policyholders originating in the Iowa Company under a purported reinsurance agreement between petitioners. The Iowa Receiver was not recognized, notified or asked to participate and has not approved or consented to such action. The policyholders originating in the Iowa Company were not advised of their legal rights or the controversy existing between the Michigan and Iowa Receivers. The action taken was in derogation of the rights of Iowa, its Receiver and the policyholders originating in the Iowa Company under the law and policy of Iowa. Surely petitioners cannot now gain advantage of such action based upon their erroneous judgment of the rights of Iowa and its Receiver. Their claim is not germane to the issue here presented. The Circuit Court of Appeals directly and correctly answers this claim as follows:

> "The Michigan receiver and the Indiana company contend here that many of the policyholders of the old

> Iowa company have lost their rights to the benefits of the Iowa deposit, by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana company, but, without regard to the ultimate merits of these contentions, they are, for the purposes of this proceeding, merely questions incident to the administration of the deposited securities in the Iowa court, and do not affect the general vesting of the title in the Iowa Insurance Commissioner as of June 17, 1938, or the primary right of the Commissioner and the Iowa courts to control the securities."
>
> *American United L. Ins. Co., et al.* v. *Fischer*, 130 Fed. (2d) 643, at 648.

While petitioners suggest that the decision of the Circuit Court of Appeals throws the present receivership into a chaotic condition, this, in respondent's judgment, is not correct. The Michigan Receiver and American United have acted in total disregard of the rights of the respondent and without notice or recognition of the Iowa Receiver in creating the present situation. This situation will be easily and quickly clarified when the rights of the parties are defined by a final decision in this case.

The statement of the Circuit Court of Appeals in its supplemental opinion on Petition for Rehearing, which concluded the litigation to the satisfaction of the Texas Receiver, is a complete and final answer to warrant a denial of this petition for certiorari, and is in conformity with the opinion of the Supreme Court:

> "Our opinion declares that, as a matter of Iowa law and policy, the securities deposited with the Iowa Insurance Commissioner, and in his possession, were charged with protective lien or trust rights in favor of the policyholders of the old Iowa company, and that, on June 17, 1938, legal title to these securities became vested in the State of Iowa, for the benefit of such policyholders, with the right, from that time on, in the Iowa Insurance Commissioner, in his official capacity or in his facilitating status as receiver, to receive and collect payments

of interest, dividends and principal, as inherent incidents of his primary right of title and possession. Insofar as such property is capable of being administered by the Iowa courts, the rights existing under Iowa law are clearly primary and independent, and, as we expressed it in our opinion, they are without 'any subordinacy to the Michigan receivership here' or to 'any one claiming ancillary or derivative rights, such as the Texas receiver, or the Indiana company which has made a reinsurance agreement with the Michigan receiver'."

American United L. Ins. Co., et al. v. *Fischer*, 130 Fed. (2d) 643, at 648.

CONCLUSION.

The unanimous opinion and decision of the Circuit Court of Appeals is clear and correct in pronouncing the law and policy of the State of Iowa upon the facts in this case. No questions have been raised which have not heretofore been considered, which entitle petitioners to a review by this Court. All policyholders will benefit by the termination of this litigation. Respondent asks that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Attorneys for Respondent.

APPENDIX "A".

Exhibit "D" (Record pages 70 to 76).

Code of Iowa, 1939:

(The following statutes of the State of Iowa as set forth in the Code of Iowa, 1939, were on August 24, 1921, and now are in full force and effect:)

Chapter 395:

8613.1 *Ex Officio receiver.* The commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership.

Chapter 398:

8643 *Level premium plan companies.* Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies.

8654 *Valuation of policies.* As soon as practicable after the filing of such statement, the commissioner of insurance shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half per cent interest, or actuaries' combined experience table of mortality and four per cent interest, in all companies organized under the laws of this state. For the purpose of making such valuation he may employ a competent actuary, who shall be paid by the company for which the service is rendered; but the company may make such valuation and it shall be received by the commissioner upon satisfactory proof of its correctness.

8655 *Deposit to cover valuation—policy loan agreements.* The net cash value of all policies in force in

any such company being ascertained, the commissioner shall notify it of the amount, and within thirty days thereafter the officers thereof shall deposit with the commissioner the amount of the ascertained valuation in the securities specified in Section 8737.

Any Iowa company may file a verified statement of the total amount of loans secured by its policies, and evidence of such indebtedness shall be checked by the commissioner at least semiannually. Such verified statement shall be taken and considered as a security to be deposited under the provisions of Section 8741.

There may be included in the deposit an amount of cash on hand not in excess of five per cent of the deposit required, such deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance.

Deposits of securities may be made in excess of the amounts required hereby.

8660 *Examination.* The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management.

8661 *Injunction—receivership—dissolution.* If upon such examination the commissioner is of the opinion that the company is insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, he shall advise and communicate the facts to the attorney general, who shall at once apply to the district court of the county or any judge thereof, where the home office of a domestic company or an agency of a foreign company is located, for an injunction to restrain the company from transacting further business except the payment of losses already ascertained and due, until further hearing, and for the appointment of a receiver, and, if a domestic company, for the dissolution of the corporation. The judge of such court may grant a preliminary injunction with or without notice, as he may direct.

8662 *Decree.* The court, on the final hearing, may make decree subject to the provisions of Section 8663 as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company.

8663 *Securities.* The securities of a defaulting or insolvent company, or a company against which proceedings are pending under Sections 8661 and 8662, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit.

8664 *Change of securities.* Companies shall have the right at any time to change the securities on deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of security deposited, then the company may withdraw such excess, but twenty-five thousand dollars must always remain on deposit.

8665 *Interest on securities.* Companies having on deposit with the commissioner of insurance bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additional security when and as called for by the commissioner, or pending any proceedings to close up or enjoin it, the commissioner shall collect such dividends or interest and add the same to such securities.

8741 *Securities deposited.* All such securities shall be deposited with the commissioner, subject to his approval and kept at such place or places and on such terms as he may designate, and shall remain on deposit until withdrawn in accordance with law, or the order of the commissioner.

8741.1 *Exchange of securities.* Any of the securities owned and held under the provisions of this chap-

ter, including real estate owned and held, in its own office or on deposit with the insurance department may be exchanged for other securities and real estate authorized to be held under said chapter provided that it appears that such exchange will strengthen the position of said company and be to its advantage and that such exchange shall receive the approval of the commissioner of insurance, and provided further that in the exchange of such securities the values may be placed upon such securities and real estate so received and shall be fixed and determined by the department of insurance but upon a valuation not relatively higher than that of any such securities so exchanged. Such securities and real estate so received may be accepted by the insurance department as eligible for reserve deposits. All acts and parts of acts insofar as they are in conflict with this section are hereby repealed.

Chapter 409:

9105 *Life companies—consolidation and reinsurance.* No company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall consolidate with any other company or reinsure its risks, or any part thereof, with any other company, or assume or reinsure the whole or any part of the risks of any other company, except as hereinafter provided; provided that nothing contained in this chapter shall prevent any company, as defined in Section 9104, from reinsuring a fractional part of any single risk.

9106 *Submission of plan.* When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The company must also file a statement of its assets and if a legal reserve company, of the reserve value of its policies or contracts.

9107 *Procedure—Notice.* The commission shall proceed to hear and determine such petition, without

notice. If the commission shall deem it necessary in order to conserve the interests of the policyholders that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policyholders of the said company or companies of the pendency of such petition, and the time and place at which the same will be heard, the length of time of such notice to be determined by the commission.

9108 *Commission to hear petition.* For the purpose of hearing and determining such petition, a commission consisting of the governor, commissioner of insurance, and attorney general is hereby created. In the inability of the governor to act, the secretary of state may act in his stead.

9111 *Authorization.* Said commission, if satisfied that the interests of the policyholders of said company or companies are properly protected and no reasonable objection to said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policyholders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable.

9112 *Unanimous decision required.* Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of the policyholders of any such company or companies proposing consolidation or reinsurance.

9114 *Approval and filing with commissioner.* Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by him determined before any consolidation or reinsurance shall be effected.

APPENDIX "B".

The contracts, Exhibits "A", "B" and "C", contained the following provisions (Record pages 67 to 70, inclusive):

> "* * * and covenants and agrees to and with the said American Life Insurance Company of Des Moines, Iowa, and to and with each of the holders of the policies and contracts herein referred to, * * *."

And each contained the following provisions (Record page 69):

> "5. The transfer hereby made is subject to the requirements of the statutes of the State of Iowa, relative to the deposit with the Commissioner of Insurance of that State of securities representing the net cash value of outstanding contracts of life insurance, endowments, or annuities, and it is understood that many of the securities hereby transferred are now in the custody of said Commissioner of Insurance of the State of Iowa by virtue of deposits made in pursuance of such statutes."

> "6. It is further agreed by said American Life Insurance Company, Detroit, Michigan, that the deposits required by the laws of the State of Iowa to be made with the Commissioner of Insurance on all contracts of life insurance, endowments, or annuities issued by said American Life Insurance Company, of Des Moines, Iowa, and hereby reinsured, will be now and hereafter maintained at all times, both in amount and character of securities, as would have been required of said American Life Insurance Company, of Des Moines, Iowa, under the laws of said State of Iowa. The amount of such deposit required shall be determined by valuation of policies to be made on January first and July first of each year."

After the execution of the contracts, Exhibits "A", "B" and "C", and pursuant thereto, the Detroit Company executed and delivered to each of the Des Moines Company policyholders and each said policyholder accepted a document en-

titled "Certificate of Assumption". This certificate contained the following provisions (Exhibit "E", Record page 79):

> "THIS IS TO CERTIFY that the above numbered policy issued by the American Life Insurance Company of Des Moines, Iowa, has been assumed according to its terms, provisions and values by the *American Life Insurance Company*, Detroit, Michigan, and the *American Life Insurance Company*, Detroit, Michigan, will carry out all the provisions of said policy and perform all of the obligations therein contained as fully as the same would or should have been performed by the American Life Insurance Company of Des Moines, Iowa, * * *."

Prior to September 1, 1921, all of the contracts of insurance issued by the Des Moines Company were executed and issued at the home office of the company in Des Moines, Polk County, Iowa (Record page 56). Each had printed on the face of the contract in large letters the following:

> "THE FULL RESERVE ON THIS POLICY IS SECURED BY A DEPOSIT OF APPROVED SECURITIES WITH THE STATE OF IOWA." (Exhibit "F", Record page 80.)

In Section (6) General Provisions of the policy contract is the provision:

> "The legal reserve on this policy shall be invested in approved securities and deposited with the State of Iowa as required by law." (Exhibit "F", Record page 82.)

Filed